

**In the United States Bankruptcy Court  
for the  
Southern District of Georgia  
Savannah Division**

In the matter of:

DOMINIC NICHOLAS APPLGATE  
(Chapter 7 Case Number 11-40073)

*Debtor*

DONALD F. WALTON,  
UNITED STATES TRUSTEE,  
REGION 21,  
JAMES W. SOLEO  
DR. RANDOLPH C. BISHOP  
DRB ACQUISITIONS, LLC  
DR. CLIFF L. CANNON, JR  
STEPHEN CANNON  
SCC ACQUISITIONS, LLC  
JOSEPH E. VALLOTION, III  
ALLEN EAGER, and  
ALVA HOLDINGS, LLC  
CORNERSTONE INVESTMENTS, LLC  
FUDD DT INVESTMENT GROUP, LLC  
CORNER STONE PROPERTIES  
INVESTMENT, LLC  
SAVANNAH CAPITAL, LLC

*Plaintiffs*

v.

DOMINIC NICHOLAS APPLGATE

*Defendant*

Consolidated § 727  
Adversary Proceeding

Number 11-4033

**FILED**

Samuel L. Kay, Clerk  
United States Bankruptcy Court  
Savannah, Georgia  
By Ibarnard at 12:51 pm, Mar 26, 2012

**ORDER ON MOTION FOR RECONSIDERATION**

**FINDINGS OF FACT**

Defendant/Debtor, Dominic Applegate, filed Chapter 7 bankruptcy January 12, 2011. Nine adversary proceedings have been commenced against Defendant. Two have been terminated. Of the remaining cases, six were stayed, at the parties' request, to the extent each sought to determine dischargeability of a specific debt under 11 U.S.C. § 523, until the United States Trustee (the UST) has concluded prosecution of the seventh adversary proceeding, asserting an Objection to Discharge under 11 U.S.C. § 727. On the Court's motion, each of the section 727 claims, asserted by a creditor, was consolidated into the UST's action, now the Consolidated § 727 Adversary Proceeding. Order Consolidating Objections to Discharge Under 11 U.S.C. § 727, A.P. No. 11-4033,<sup>1</sup> Dckt. No. 26 (Feb. 2, 2012).

The Order Consolidating Objections to Discharge (the Consolidation Order) required each Plaintiff to file a pleading by February 22, if that party wished to either (1) withdraw from the Consolidated § 727 Adversary Proceeding and forego the right to pursue a section 727 claim or (2) remain a party and have discovery extended. Sherwin Robin, as attorney for three Plaintiffs—Cornerstone Investments, LLC, Corner Stone Properties Investment, LLC, and Savannah Capital, LLC—timely filed a Motion to Extend Time for Discovery. Six days later, on February 27, 2012, this Court entered an Order Granting Plaintiffs' Motion to Extend Discovery (Order Extending Discovery) and extended the

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<sup>1</sup> For this Order, documents found on the main bankruptcy case docket (Case No. 11-40073) will be cited as Dckt. No. \_\_; documents found on the Consolidated § 727 Adversary Proceeding docket (A.P. No. 11-4033), which was originally the UST's adversary proceeding docket, will be cited as A.P. Dckt. No. \_\_; and documents found on other adversary proceeding dockets will be cited as A.P. No. \_\_, Dckt. No. \_\_.

Discovery Deadline to April 27, 2012, sixty days after entry of the Order. A.P. No. 11-4023, Dckt. No. 25 (Feb. 28, 2012).

Defendant filed a Motion to Reconsider the Order Extending Discovery, asserting that the Court granted the Motion for Extension of Discovery prematurely, six days after its filing, by failing to follow Local Rule 7.5, which states that “each party opposing a motion shall serve and file a response within fifteen days.” A.P. Dckt. No. 28 (Mar. 1, 2012).

### CONCLUSIONS OF LAW

#### A. Local Rule 7.5 is Not Applicable.

The Local Rules for Civil Cases and for the Administration of the Court [United States District Court] are distinct from the Local Rules for Bankruptcy Practice in the Bankruptcy Court for the Southern District of Georgia. Many of the District Court’s local rules have been incorporated into the Local Rules for Bankruptcy Practice, in the interest of uniformity, but the District Court’s local rules have not been incorporated into the Local Rules for Bankruptcy Practice in their entirety. Local Rule 7.5, which is relied upon by Defendant, has been incorporated into the Local Rules for Bankruptcy Practice, but its application is limited. Local Rules 7.1, 7.2, and 7.5 “apply only if directed by the Bankruptcy Judge or by the Notice issued by the Bankruptcy Clerk of Court.” At no point in the Appellate Proceedings, have I ordered Local Rule 7.5 to apply, nor did any notice sent by the Clerk state that Local Rule 7.5 will apply. Thus, Defendant was incorrect in asserting

that the Order Extending Discovery was premature.

**B. All Documents MUST be Filed with the Correct Caption in the Correct Adversary Proceeding.**

Defendant also seeks reconsideration of the Order Extending Discovery because he does not believe these motions should have been ruled on by the Court because they were filed as separate motions in the individual adversary proceedings instead of the Consolidated § 727 Adversary Proceeding. Thus, they were captioned incorrectly: they do not conform to the example provided by the Court in the Consolidation Order. A.P. Dckt. No. 26 (Feb. 2, 2012).

Plaintiffs **MUST** follow the direction of this Court and file any further pleadings, motions, briefs and the like with the correct caption, as demonstrated in the Consolidation Order, of February 2, 2012, A.P. Dckt. No. 26, and in the correct case, the Consolidated § 727 Adversary Proceeding, No. 11-4033. However, I reject the hyper-technical suggestion that the Motions for Extension of Discovery be rejected, while admonishing Plaintiffs' counsel to adhere to the Court's Consolidation Order in the future.

**C. Motion for Reconsideration.**

As all the Parties in this proceeding are aware, this is a complicated and litigious case. There are currently seven adversary proceedings pending against Defendant. To serve justice and preserve judicial economy, this Court bifurcated each Party's section

523 claims and section 727 claims and then consolidated the section 727 claims into one action with the UST as lead counsel. Recognizing that discovery had been delayed while issues such as abstention and consolidation were resolved, this Court granted the newly consolidated Plaintiffs twenty days to seek an extension of discovery. Plaintiffs, Cornerstone Investments, LLC, Corner Stone Properties Investment, LLC, and Savannah Capital, LLC, each filed a Motion for an Extension of Discovery. This Court granted the requesting Plaintiffs sixty days to complete discovery. Order Extending Discovery, A.P. No. 11-4023, Dckt. No. 25 (Feb. 28, 2012).

Although the Order Extending Discovery was not premature, I have reviewed the arguments presented in the Brief in Support of Defendant's Motion for Reconsideration and DENY Defendant's Objection to the extension of Discovery on the Merits. "Reconsideration of a previous order is an extraordinary remedy to be employed sparingly." Uhlig v. FDIC, 2012 WL 845276, 1 (S.D. Ga 2012). The extension of Discovery is appropriate in light of the unique facts of this case and the liberal discovery rules. Conley v. Gibson, 355 U.S. 41, 47 (1957) ("simplified 'notice pleading' is made possible by the liberal opportunity for discovery and other pretrial procedures") (overruled on other grounds); Herbert v. Lando, 441 U.S. 153, 183 (1979) ("discovery is normally to be 'accorded a broad and liberal treatment'") (quoting Hickman v. Taylor, 329 U.S. 495, 507 (1947)).

It would be wholly inconsistent for the Court to order consolidation of the

section 727 actions in order to ensure finality of any order or judgment entered in that action, yet deny a reasonable period for discovery to these Parties who, until consolidation was ordered, had every reason to believe that I would stay proceedings in their individual case. It is the height of folly for Defendant to generate so many ill-conceived and pointless motions in an effort to curtail this Courts discretion in regulating Discovery.

Federal Rule of Civil Procedure 26, governing discovery, is incorporated into adversary proceedings through Federal Rule of Bankruptcy Procedure 7026. Courts have the “sound discretion” to decide civil discovery matters. U.S. v. R. Enterprises, Inc., 498 U.S. 292, 305 (1991) (“in the parallel context of pretrial civil discovery, a matter also committed to the sound discretion of the trial judge”); Patterson v. U.S. Postal Service, 901 F.2d 927, 928 (11<sup>th</sup> Cir. 1990). This discretion may be used to protect a party “from annoyance, embarrassment, oppression, or undue burden or expense”; however, Defendant has not demonstrated that he will be prejudiced by this delay, and there is no evidence that Plaintiff requested the extension for any dilatory purposes. FED. R. CIV. P. 26(c). Defendant relies on arguments of efficiency and “the strong public interest in the preservation of a debtor’s assets for the purposes of paying creditors.” Brief, A.P. Dckt. No. 28, (Mar. 1, 2012). Weighing the need for efficiency against the right of parties to perform liberal discovery, Defendant’s arguments are unconvincing.

### **ORDER**

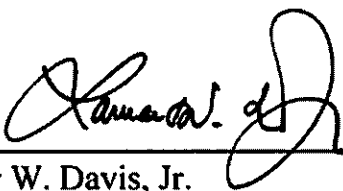
Due to the new delay occasioned by the dilatory motions filed by Defendant

and the uncertainty over the Court's ruling, I now reset the Discovery Deadline to May 25, 2012.

Furthermore, counsel for all the Parties (United States Trustee, Plaintiffs, and Defendant) are ORDERED to file the Consolidated Proposed Pre-trial Order not later than June 4, 2012.

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS ORDERED that Defendant's Motion for Reconsideration of Order Granting Plaintiffs' Extension of Discovery is DENIED.

The Clerk is ORDERED to file this Order in the captioned Consolidated § 727 Adversary Proceeding, A.P. No. 11-4033, as well as the adversary proceedings in which the Plaintiffs erroneously filed the Motions, A.P. No. 11-4023, A.P. No. 11-4025, A.P. No. 11-4026.

  
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Lamar W. Davis, Jr.  
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 23<sup>rd</sup> day of March, 2012.